

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK RATIONALIZATION  
SERVICE CHANGES, 2011

Docket No. N2012-1

**REPLY OF THE UNITED STATES POSTAL SERVICE  
TO DAVID POPKIN MOTION NO. 1**

The United States Postal Service hereby replies to the above-identified motion dated January 9, 2012. For the reasons stated below, the motion should be denied.

On January 6, 2011, in accordance with 39 C.F.R. § 3007.21, the Postal Service filed an application for non-public treatment of specific data included in USPS Library Reference N2012-1/NP7.<sup>1</sup> The data are from the USPS Origin-Destination Information System (ODIS) and reflect estimates of the average daily First-Class Mail volume that originates within each of the 914 3-digit ZIP Code service area and destines in each of the 929 active 3-digit ZIP Code service areas in the postal network. See, USPS Library Reference N2012-1/NP7, Tab 7, *FY2010 FCM ADV*. On January 9, 2012, Mr. Popkin filed Motion No. 1 challenging the application for non-public status on the basis of several assertions, each of which is addressed below.

In administering 39 U.S.C. § section 504(g)(3)(A) as implemented by subsection 3007.33 of title 39 C.F.R., the Commission must balance the nature and extent of the likely commercial injury identified by the Postal Service in an application for non-public status against the public interest in maintaining the financial transparency of a

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<sup>1</sup> Notice of United States Postal Service of Filing of Library Reference N2009-1/NP7 and Application for Non-Public Status (January 6, 2012);

government entity competing in commercial markets. At page of his motion, Mr. Popkin argues:

First-Class Mail is a Market Dominant product to which the Postal Service has a monopoly on carriage. The Postal Service does not provide any information or discussion on the relationship that might exist between First-Class Mail volume which would be in the Library Reference and other mail volumes which a competitor could carry such as the equivalent of Express Mail, Priority Mail, or package services.

The nature of the relationship that Mr. Popkin argues that the Postal Service should discuss is not clear. However, the products he has listed create the appearance of a concession that the market dominant status of a postal product, by itself, does not preclude extension of the protections in the section 504(g)(3) balancing test to that product.<sup>2</sup> Although the Private Express Statutes<sup>3</sup> (PES) have historically restricted the private carriage of letters, contrary to Mr. Popkin's assertion, they do not confer a monopoly to the Postal Service by prohibiting such carriage. Moreover, by operation of the Postal Accountability and Enhancement Act, the PES were amended to significantly expand the opportunity for private carriage by imposing a weight restriction in the definition of "letter" in 39 C.F.R. § 310.1 and lowering the barrier to private carriage imposed by the "cost" test of the extremely urgent suspension in 39 C.F.R § 320.6. See Pub. L 109-435, Title VII, § 503, 120 Stat. 3234. (December 19, 2006). Thus, the competitive benefit that the PES conferred before December 2006 has since been materially diminished.

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<sup>2</sup> In its Second Notice of Proposed Rulemaking in Docket No. RM2008-1, the Commission indicated that whether a product was market dominant or competitive would be a factor in its analysis (PRC Order 194 at 19, fn. 18 (March 20, 2009)) but ultimately steered clear of concluding that it would be a controlling factor.

<sup>3</sup> 39 U.S.C. §§ 601-1606; 18 U.S.C §§1693-99.

In their current form, the Private Express Statutes reduce but do not eliminate the risk of commercial harm that could result from publication of the disaggregated First-Class Mail volume data in USPS Library Reference N201-1/NP7. It is by design that neither section 504(g)(3)(A) nor its implementing regulations preclude the application of the balancing test to First-Class Mail. Under the enhanced public accountability mandated by the 2006 amendments to title 39 of the United States Code, the Postal Service has greatly expanded the nature of data routinely published for the benefit of the Commission's exercise of its regulatory responsibilities. To-date, the Commission has administered section 504(g)(3)(A) in a manner which demonstrates that the public interest in accountability does not require public disclosure when the public interest in the postal system avoiding competitive harm is superior. Accordingly, the Postal Service submitted its January 6 application for non-public status for the plant-to-plant First-Class Mail volume data in USPS Library Reference N2012-1/NP7.

It is apparent from Mr. Popkin's motion that the idea that the Postal Service only competes with other hard-copy delivery services is deeply ingrained. However, it also is deeply flawed. Products such as First-Class Mail, Express Mail and Parcel Post face disparate degrees of competition from such private delivery services. However, unlike Parcel Post, both of the other products face very intense competition from the escalating expansion of the use of electronic media to transmit messages and conduct transactions that were formerly sent by regular (First-Class Mail) or expedited (Express Mail) letter. Firms engaged in competition to serve as the medium of communication between sellers and buyers in different markets throughout the United States are not employ an increasingly diverse array of electronic platforms to compete with hard-copy

message delivery, whether postal or private. None of the players is known to swap or publish disaggregated data reflecting the volume of the communications or letters or packages they transmit within or between specific markets. In the circumstance where only one of those competitors is subject to the regulatory oversight of the Postal Regulatory Commission, its oversight responsibilities can be accomplished by a proper application of the balancing test in section 504(g)(3)(A). And the participation in that process by responsible members of the public accountable to the Commission can be accomplished through operation of 39 C.F.R. Part 3007.

Mr. Popkin does not argue that the protective conditions currently in effect diminish or thwart the financial transparency of the Postal Service within the meaning of section 504(g)(3)(A). He does not argue that the conditions prevent the accomplishment of any public policy or litigation objective pertinent to the purposes of the instant docket. He does not argue that the protective conditions frustrate his ability to identify any issue for the Commission in the instant docket to exercise its authority to examine. He does not argue that the protected nature of the data prevent him for pursuing his apparent interest in whether there is a basis for asserting non-compliance with the existing overnight First-Class Mail service standard regulation. Nor does he identify any financial or other accountability issue that outweighs the commercial and competitive interests identified by the Postal Service.

Mr. Popkin's misunderstanding of the application for non-public status appears to play a large part in his attack on the protective conditions. At page 2 of his motion, he acknowledges the Postal Service's concerns, as expressed in at page 3 of its application for non-public status, that:

disclosure of First-Class Mail volumes would allow competitors gain specific insight into local customer behavior, gauge the size of the delivery market, and develop strategies for marketing resources. [footnote omitted]

and at page 4 that:

a competitor could adjust its product offerings, prices, operations and marketing activities to compete for the volume represented by these data.  
[footnote omitted]

However, he argues at page 2 of his motion that:

The Postal Service also claims that a competitor could gain specific insight into local customer behavior. I don't see how aggregate data between points A and B could provide any insight into any specific customer's mailing levels.

Contrary to Mr. Popkin's misperception, the customer behavior about which the Postal Service is concerned is reflected in the disaggregated ODIS data revealing the collective mailing patterns of discrete *communities* or competitive *markets*, not the mailing practices of individual customers within those communities or markets. Thus, without an appreciation for the commercial and competitive aspects of First-Class Mail and based on a misunderstanding of the Postal Service's application for non-public status, Mr. Popkin merely asserts that the protective conditions in place should be lifted so that "any individual" can personally validate whether particular mail processing plant origin-destination pairs qualify for consideration for overnight First-Class Mail service based on the 1.5 percent volume criterion in 39 C.F.R. § 121(a).<sup>4</sup>

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<sup>4</sup> It is assumed that Mr. Popkin seeks to independently validate which non-intra SCF origin P&DC/F-to-destination SCF pairs could be considered for the application of an overnight First-Class Mail service standard on the basis of operational and transportation feasibility factors under current 39 C.F.R. § 121.1(a), notwithstanding the pending proposal to eliminate that aspect of the overnight service standard entirely. Such an analysis requires knowledge of which 3-digit ZIP Code service areas are assigned to which plants on an origin-destination basis. Moreover, it should be emphasized that, contrary to the assertion at page 2 of Mr. Popkin's motion, the 1.5 percent origin-destination volume threshold does not require *establishment* of an overnight service standard for a particular origin-destination mail processing plant pair; it merely requires postal management to determine whether operational and transportation feasibility considerations support establishment of an overnight service standard between the two. The merits of Mr. Popkin's interest in this matter aside, he makes no claim that the currently applicable protective conditions inhibit his ability to undertake such an investigation.

However, the currently applicable non-disclosure conditions serve the public interest in protecting valid and compelling commercial interests of the Postal Service. At the same time, those conditions allow a diverse range of intervenors, Mr. Popkin included, the privilege of access to sensitive commercial data, and the ability to pursue what they perceive to be the public interest in a manner which holds them accountable to the Commission, and in exchange for their agreement to do so in a manner that does not undermine the ability of First-Class Mail to fairly compete in a marketplace that is proving to be more challenging with each passing day. Mr. Popkin offers no basis for why the public interest in protecting the commercial and competitive interests of the Postal Service implicated by the data in question should be undermined merely his by projecting onto the entire American public his curiosity regarding compliance with one aspect of a service standard regulation on the verge of being eliminated. Reduced to its essence, Mr. Popkin's argument is not that financial transparency or accountability would be enhanced, but that it simply would be convenient for someone who wanted to conduct such an analysis to not have to agree to protective conditions.

Finally, the Postal Service observes that a similar information access dispute arose in Docket No. C2001-3, and was resolved by the Commission without requiring public disclosure of the 3-digit ZIP Code to 3-digit ZIP Code First-Class Mail volume data sought by the requester. In that instance, protective conditions were upheld. See, Docket No. C2001-3, Presiding Officer's Ruling C2001-3/36 at 2, and USPS Library References C2001-1/10 and C2001-15.

For the reasons stated in its January 6 application for non-public status and in this reply, the Postal Service respectfully requests that the Commission deny Mr.

Popkin's motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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